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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TR.P.(C.) 188/2024 CM APPLs. 65746/2024 & 65748/2024**

GOKUL PRASAD

.....Petitioner

Through: Mr.Anupam Dwivedi, Adv.

versus

RAKESH PAL

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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12.11.2024

1. The petitioner in the instant transfer petition seeks for transfer of an execution petition no. 154/2023, pending before the Court of District Judge-05, East-District, Karkardooma Courts, Delhi to any other District Courts of Delhi. The petitioner appears to be the objector in the aforesaid Execution proceedings. It appears that judgment and decree came to be passed on 05.10.2023, in Civil Suit No.390/2023, which is sought to be executed.
2. The petitioner in the instant transfer petition, in paragraph nos. 35 to 37, has made the following averments seeking transfer of the present executing proceedings:-

"35. That on 25.09.2024, the counsel for the Respondent No.1/ DH initially tried to get an adjournment on the ground that the DH has filed an appeal before the Hon'ble Delhi High Court, challenging the order dated 24.04.2024 passed in Execution Case and the Appeal was listed for hearing 28.10.2024 and hence, the evidence may not be recorded till the appeal was decided. When the Ld. Executing Court inquired whether there was any stay granted by the Hon'ble High Court, the counsel for the DH replied in negative. The Ld. Executing Court



rejected counsel's request of adjournment and directed for recording of the Objector's Evidence. Consequently, some documents were tendered in examination-in-chief and exhibition I marking of documents was going on. Suddenly, the Counsel for the DH, Sh. Roshan Sahay, Advocate, started shouting in the court and created a ruckus. The counsel for the DH shouted at the court saying that he had no trust upon the Ld. Executing Court, as the Ld. Court was giving undue favour to the Objector from the very beginning. He further said that his case may be sent to some other court as the Ld. Executing Court was not acting fairly. He further said that since he was a member of the Bar Association, he had got every right to raise his voice if the court was not acting fairly. Such sudden behaviour of the counsel was shocking for the Ld. PO as well for the others, present inside the court room. A true copy of the order dated 25.09.2024, passed by the Ld. Executing Court of Ms. Pooja Jain, Ld" DJ-03, East, Karkardooma Courts, is annexed herewith and marked as ANNEXURE P-34.

36. That it is important to mention here that the DH's Counsel, Sh. Roshan Sahay, advocate, is politically very active in the Karkardooma Bar Association and had once been elected as the member executive of the Association. The said execution case was sent to the Ld. Principal District & Sessions Judge, East, Karkardooma Courts, Delhi, on the same day at 2 PM for transferring to some other court.

37. That on 25.09.2024 at around 12.30 PM, the Objector came with his son for appearing before the Court of Ld. Principal District & Sessions Judge, East. While the Objector was sitting with his son in the common hall, he saw the said counsel Sh. Roshan Sahay, going into the corridor leading to the chamber area of the Ld. Principal District & Sessions Judge, where the entry for common is restricted. Sh. Sahay came out of the chamber area after almost 20 minutes."

3. The crux of the case lies in paragraph no. 37, which essentially indicates that, when the objector was sitting with his son in the common hall, he had witnessed a counsel, one Mr. Roshan Sahay, walking into the corridor leading to the chamber area of learned Principle District and Sessions Judge. According to the petitioner, the entry into the said corridor is generally restricted. As per the said averments, it is seen that Mr. Sahay allegedly returned from the chamber area after almost 20 minutes. The averments further indicate that on the same date, i.e. 25.09.2024, the



execution petition was ordered to be transferred to the Court of District Judge-05, East-District, Karkardooma Courts.

4. If the aforesaid submissions are considered in right perspective, it is seen that the said execution petition is transferred at the instance of Mr. Sahay in a quick manner.

5. However, in the entire petition, learned counsel for the petitioner fairly submits that he is not casting any aspersions against the Presiding Officer, who at present is seized with the matter. His sole grievance, as seen from the pleadings, pertains to the atmosphere of the Karkardooma Courts, where the petitioner apprehends that he may not get a fair trial due to the influence of Mr. Sahay.

6. I have heard the learned counsel for the petitioner and considered the submissions advanced. In order to appreciate the contentions, it would be necessary to place reliance on a decision passed by the Supreme Court in the case of *Seema Kaushal v. Dheeraj Kumar*¹, where the Supreme Court has dealt with a transfer petition, wherein, the petitioner alleged that the father-in-law of the petitioner, therein, was a former Assistant Superintendent of Police and due to the same, threat to the petitioner was apprehended. In the said case as well, there were no allegations levelled against the Presiding Officer, but the apprehension was solely confined to the possible threat and influence of the father-in-law of the petitioner, therein, and that due to the said influence, decision of the Trial Court was likely to be influenced. The Supreme Court took note of the aforesaid contentions and had opined that the extension of some threat, as alleged by the petitioner, therein, could constitute danger to the personal security of the petitioner therein, but the



same would not be sufficient ground for the transfer of the petition.

7. Similarly in the case of **Zohra Begum v. VIIIth Addl. Distt. Judge, Bareilly**,² the High Court of Allahabad, in paragraph nos.7 and 8, has made the following pertinent observations:-

"7. The allegation is to the extent apart from the allegation against the officer is that the petitioner has a reasonable apprehension that he will not be getting justice if the appeal is decided by any officer in the district since the opposite party who is an office-bearer of the local Bar Association and therefore, the appeal filed by her would be decided in her favour. This apprehension according to Mr. Krishna Mohan can be reasonably apprehended by the appellant petitioner on account of the fact that the appellant petitioner had lost the case in the learned trial court.

8. If every such apprehension is to be accepted, in that event all cases in which a lawyer is involved has to be transferred outside the courts or districts in which he is practicing. This apprehension that has been expressed is a subjective one. It cannot be substantiated objectively. Subjective apprehension is a particular state of mind of a particular person. Such ground of subjective satisfaction cannot be accepted. Even though Mr. Krishna Mohan refers to various decisions of the High Courts as well as Supreme Court with regard to the proposition when an order of transfer is to be made, but it is not necessary to go into those decisions since there is no doubt or dispute with regard to the proposition laid down therein. It is settled principle of law that if there is sufficiently reasonable suspicion, however little it may be, in the mind of the litigant, in such circumstances the same has to be taken into account and weighed with as a factor for the purpose of deciding an application under Section 24 of the Code of Civil Procedure. But such suspicion must have some nexus or some objectivity. If some one comes and says that he has some suspicion and apprehension in his mind, in that event it will be too general a proposition and will destroy the entire infrastructure of the judicial system. Defeat of a case in the learned trial court cannot be a ground for suspicion. If such a proposition is accepted, in that event whenever a litigant loses and then he will be asking for transfer of his appeal, and in that event all appeals are to be transferred simply on the basis of subjective suspicion on the part of the appellant. It will be too wide a proposition which is very difficult to accept. In view of

¹ Transfer Petition (Civil) No. 1621 of 2022.

² 2000 SCC OnLine All 351.



the settled principle the suspicion should be a suspicion to be accepted under the judicial norms and principles to be a suspicion which could be reasonably harbored by a litigant. The court has to find out the situation and the circumstances whether the suspicion so harbored could be harbored reasonably by a sensible man."

8. If the aforesaid observations are considered in right perspective, then the same would indicate that one of the parties to the litigation was an office bearer of the local Bar association and therefore, the transfer was sought for. The Court then held *"if every such apprehension is to be accepted, in that event all cases in which a lawyer is involved has to be transferred outside the courts or districts in which he is practicing. This apprehension that has been expressed is a subjective one. It cannot be substantiated objectively."*

9. In the case of ***D.Ramyamery v. C.Ravindran***³ the High Court of Andhra Pradesh, in paragraph no.19, has taken note of the fact that *"in absence of there being any specific instance or detail to substantiate the ground for transfer, the request for transfer should not be ordinarily acceded to"* Paragraph no.19 of the aforesaid decision reads as under:-

"19. The another allegation made by the petitioner is that the respondent is having high influence, due to that he influenced the Bench Clerk, who openly proclaimed that the respondent is going to get divorce. The role of the Bench Clerk in the Court is to assist the Court, and discharge his duties assigned to him, and he has no role in judicial decision, and the allegations made by the petitioner with regard to change of section of law or Act in the petition filed by the respondent can be agitated before the trial Court while submitting her arguments with regard to maintainability of the petition filed by the respondent. The mere allegation that the respondent is said to be proclaiming that he is going to win the case, without any specific instance or details cannot be a ground to consider the request of the petitioner to transfer the case from one Court to another Court. There is no dispute with regard to the ratio laid down by the Hon'ble Apex Court in the decisions relied on by the learned Counsel for the petitioner, but in those decisions also the Hon'ble Apex Court held

³ 2024 SCC OnLine AP 3144.



that there must be reasonable apprehension while considering transfer of cases from one Court to another Court, and as the Presiding Officer submitted his report in a transfer petition with regard to allegations, the Hon'ble Apex Court to protect interest of Presiding Officer transferred the case, though there was no cause to transfer the case on the allegations made by the petitioner in Pushpa Devi Saraf case referred supra."

10. Reference can also be made to the observations made by the High Court of Andhra Pradesh in the case of **G. Chinaswamy Naidu v. K. Padmanabhaiah**⁴ and by the High Court of Calcutta in the case of **Smt. Monalia Koley v. Sourav Sasaru**.⁵

11. A perusal of the above observations would clearly indicate that the power under Section 24 of the CPC should not be resorted to unless there is sufficient reasonable suspicion of threat or bias. In **Jitendra Singh v. Bhanu Kumari**⁶, the Supreme Court, while dealing with a case where the transfer petitioner expressed his apprehension regarding influence of a local politician, has observed that Section 24 CPC merely confers on the Courts a discretionary power, which the Court needs to exercise judiciously. The relevant portion of the said decision reads as under:-

"9. The purpose of is merely to confer on the court a. A court acting under Section 24 CPC may or may not in its judicial discretion transfer a particular case. Section 24 does not prescribe any ground for ordering the transfer of a case. In certain cases it may be ordered suo motu and it may be done for administrative reasons. But when an application for transfer is made by a party, the court is required to issue notice to the other side and hear the party before directing transfer. To put it differently, the court must act judicially in ordering a transfer on the application of a party. In the instant case the reason which has weighed with the High Court for directing transfer does not really make out a case for transfer."

⁴ C.R.P No. 5576 of 1998.

⁵ 2018 SCC OnLine Cal 4736.

⁶ (2009) 1 SCC 130.



12. It is pertinent to note the decision of this Court in the case of ***Pankaj Jain v. Parul Jain***⁷, wherein reliance was placed on a decision of the Supreme Court in the case of ***R. Balakrishna Pillai v. State of Kerala***⁸ and the Court observed that “*something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer*”. The similar position was taken by this Court in the case of ***Musarrat v. Asifkhan***⁹.

13. The suspicion must have some nexus or some objectivity. If any individual, by a mere assertion, states that he holds in his mind some suspicion and apprehension against the functioning of a Court, acceding to the same would be too general a proposition and such actions hold the potential to render the entire infrastructure of the judicial system non-functional.

14. Under the facts of the instant case, it is seen that in absence of there being any reasonable suspicion expressed by the petitioner *qua* the present Presiding Officer, the Court is not inclined to accede to the request of transfer of the execution petition and accordingly, the instant petition along, with pending application, stands dismissed.

PURUSHAINDR KUMAR KAURAV, J

NOVEMBER 12, 2024/MJ

⁷ 2023 SCC OnLine Del 6560.

⁸ (2000) 7 SCC 129.

⁹ 2024 SCC OnLine Del 1118.